
MINUTES

The Redevelopment Commission met in special session on Friday, January 17, 2014 at 2:00 p.m. in the Columbus, Indiana Common Council Chambers. The meeting was chaired by Mayor and Redevelopment Commission President Kristen Brown. Other Commission members present were Frank Jerome, David Wright, Sarah Cannon, and Robert Abrams (Non-voting Member).

Also present were Redevelopment Director Heather Pope; Stan Gamso, Counsel to the Commission; and Larry Kleinhenz of Kleinhenz & Co. Members of the media and other members of the public were also present.

Matters discussed during the meeting were those previously disclosed in a public notice of the meeting.

Call to Order

- 1) Roll Call by Commission Vice President Sarah Cannon in the initial absence of Mayor Brown – Frank Jerome, David Wright, Mayor Brown (who was announced by Ms. Cannon as being temporarily delayed and who joined the meeting shortly following roll call prior to any action being taken), Sarah Cannon, and Robert Abrams.

Absent: Steven Scgalski

Action Items

- 1) Consideration of Termination of Commons Space Lease with Larken & Company, LLC d/b/a Snappy Tomato: Mr. Gamso presented the Commission with the history and major terms and conditions of the 5-year lease with Larken & Company, LLC d/b/a Snappy Tomato for 678 square feet of space within the Commons, including how it had been originally entered into between Snappy and Columbus Downtown, Inc. (CDI), that it was subsequently transferred to the Commons Board upon dissolution of CDI, and was then transferred to the Redevelopment Commission for management. He next presented details of the \$61,715.24 cost incurred by the City during 2012 in connection with build-out of the space to accommodate Snappy's tenancy in the building. He then explained that it had come to his attention in November that Snappy had not paid basic rent, additional rent, or utilities for all of 2013, nor additional rent for 2012, all as required by the lease. He further explained that following inquiries after becoming aware of the situation, he had sent a letter to Larken & Company on December 23rd demanding payment of \$27,986.52 in the aggregate within 15

days for the unpaid rent, utilities and for late payment fees, whereupon he had received a telephone call and subsequent letter from Larken's legal counsel offering settlement. Commissioners had previously been provided with copies of both the demand and settlement offer letters.

Mr. Gamso stated that the response letter had offered to settle all unpaid amounts for \$16,601.27 in exchange for a release of liability for all existing and future claims, and to exit the space not later than January 31st, which offer was rejected by the Commission as being insufficient following the Commission's meeting in executive session held pursuant to **IC 5-14-1.5-6.1(b)(2)(b)**, which offer had since been orally increased to \$18,500 in telephone conversation between Mr. Gamso and Mr. Larken's counsel. Mr. Gamso then reminded Commissioners that in connection with this matter, it needed to decide both (1) whether to terminate the lease as a result of breach of its terms and conditions and (2) whether to accept the enhanced settlement offer or proceed to litigation for collection of the full \$27,986.52 owed. He then presented the Commission with a variety of timing, legal risk and other issues to consider when determining action to be taken in connection with #2, including the cost of litigation and length of time for potential ultimate collection, and provided a summary sheet with respect to these issues.

Following lengthy discussion by Commissioners with Mr. Gamso, the meeting was then opened to the public for further comment and discussion, at which time Mr. Kleinhenz made a presentation regarding his own legal claims against Larken & Company, LLC for unpaid amounts in connection with his 2005 sale of the Snappy Tomato franchise and equipment located in the then Commons Mall. He distributed copies of the asset purchase agreement related to that transaction to the Commissioners. He respectfully asked that the Commission postpone any decision to terminate the lease for a week or two so that Larken's business could continue to operate, the equipment could remain in place without involvement of the Snappy Tomato franchisor desiring to facilitate a transfer of the equipment to a successor franchisee, which postponement he believed could allow him to maintain leverage over Larken as a result of continuing rent accrual in order to settle the dispute he had over who actually owns the franchise equipment as a result of the non-payments under the asset purchase agreement. Following numerous questions from Commissioners and Mr. Gamso, and responses from Mr. Kleinhenz, Mr. Kleinhenz concluded his remarks and thanked the Commission for its time and consideration.

Then, based upon what the Commission believed was in the best interest of the City's taxpayers to generate lease revenue from the space as soon as possible, upon motion duly made by Sarah Cannon and seconded by David Wright to terminate the lease effective with close of Snappy Tomato's business at 10:00 p.m. that evening was unanimously approved.

- 2) Consideration of Acceptance of Settlement Offer: Following consideration of acceptance of the settlement offer described in Action Item 1 above, including the benefits to the City's taxpayers of settlement vs. engaging in potentially protracted and costly litigation, and believing that the situation was extremely unfortunate with no better option, upon motion duly made by Frank Jerome and seconded by Sarah Cannon, acceptance of the \$18,500 settlement offer was unanimously approved. Mr. Gamso then stated he would communicate the Commission's decision to Mr. Larken's legal counsel that afternoon and take the necessary steps to ensure Mr. Larken's discontinuation of business in the space that evening, describing Mr. Larken's attitude in connection with the entire situation as being very cooperative.

The Commission then determined to obtain two rental-rate appraisals for the 678 square feet for the purpose of negotiating with prospective new tenants to occupy and rent the space, but to save commission expenses was not planning to engage the services of a realtor to help market the space, believing that may not be presently necessary.

Adjournment

Upon motion duly made by Sarah Cannon and seconded by David Wright, the meeting was adjourned at 3:07 p.m.

Chairperson

Member



Columbus Redevelopment Commission

Special Board Meeting

Friday, January 17, 2014

2:00 PM

City Council Chambers

Member

Member

Member

Date: _____